

ORIGINAL



0000166460

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH - Chairman  
BOB STUMP  
BOB BURNS  
DOUG LITTLE  
TOM FORESE

RECEIVED

Arizona Corporation Commission

DOCKETED

OCT 27 2015 P 2:29

OCT 27 2015

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKETED BY  
KM [Signature]

In the matter of:

DOCKET NO. S-20926A-15-0116

DEER PARK DEVELOPMENT CORPORATION,

MARTY O'MALLEY and JULIE UNRUH  
O'MALLEY, husband and wife,

ROBERT D. BJERKEN,

Respondents.

**SEVENTH  
PROCEDURAL ORDER  
(Grants Motion)**

BY THE COMMISSION:

On April 8, 2015, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, for Restitution, for Administrative Penalties, and for Other Affirmative Action ("Notice") against Deer Park Development Corporation, Marty O'Malley and Julie Unruh O'Malley, husband and wife (the "O'Malleys"), and Robert D. Bjerken (collectively "Respondents"), in which the Division alleged violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of stock.

The spouse of Marty O'Malley, Julie Unruh O'Malley ("Respondent Spouse"), is joined in the action pursuant to A.R.S. § 44-2031(C) solely for the purpose of determining the liability of the marital community.

The Respondents were duly served with copies of the Notice.

On April 23, 2015, Respondents Marty O'Malley and Julie Unruh O'Malley filed a Request for Hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306.

On April 24, 2015, Respondents Marty O'Malley and Julie Unruh O'Malley filed a Notice of Bankruptcy Filing. The Notice, filed through the O'Malleys' Special Litigation Counsel in Nevada, stated that the O'Malleys filed a Chapter 11 Bankruptcy Petition with the United States District

1 Bankruptcy Court, District of Nevada, on January 30, 2014, which was converted to a case under  
2 Chapter 7 on August 5, 2014. The Notice advised that 11 U.S.C. § 362(a)(1) prohibits  
3 commencement of judicial, administrative or other proceedings against the debtors.

4 On May 13, 2015, by Procedural Order, a pre-hearing conference was scheduled for June 3,  
5 2015.

6 On May 18, 2015, counsel filed a Notice of Appearance on Behalf of Respondents Marty  
7 O'Malley and Julie Unruh O'Malley. Counsel for the O'Malleys also filed a Response to Notice of  
8 Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order  
9 for Administrative Penalties and Order for Other Affirmative Action.

10 On June 3, 2015, a pre-hearing conference was held. The Division and the O'Malleys  
11 appeared through counsel. Counsel for the O'Malleys stated that his clients' bankruptcy matter is  
12 ongoing. Counsel for the Division stated the Division's position is that the bankruptcy has no effect  
13 upon these proceedings. The parties agreed to a hearing schedule.

14 On June 3, 2015, by Procedural Order, a hearing was scheduled to commence on November 2,  
15 2015.

16 On June 16, 2015, Respondent Bjerken untimely filed an Answer. The Answer was  
17 apparently sent by email on May 12, 2015, and received by the Division on May 20, 2015, as  
18 indicated by date stamp. Mr. Bjerken indicates that the Answer was filed late as a result of a hospital  
19 stay.

20 On June 19, 2015, Respondent Bjerken untimely filed a second Answer, again stating the  
21 filing was late due to a hospital stay.

22 On June 25, 2015, by Procedural Order, a procedural conference was scheduled to commence  
23 on July 9, 2015, to determine whether good cause exists for the late filing of the Answers from  
24 Respondent Bjerken and whether the Answers should also be considered a request for hearing.

25 On July 1, 2015, the Division filed its Response to Pleadings filed by Respondent Robert D.  
26 Bjerken.

27 On July 9, 2015, a procedural conference was held. The Division appeared through counsel.  
28 The O'Malleys appeared telephonically through counsel. Respondent Bjerken appeared pro per.

1 Respondent Bjerken attributed his late filing to his medical conditions and hospitalization. Mr.  
2 Bjerken stated his desire to participate in a hearing in this matter. Good cause was found to accept  
3 Mr. Bjerken's filings as a timely request for hearing. Mr. Bjerken did not object to the previously  
4 scheduled dates for the hearing and disclosure. The Division asserted that the Answers filed by Mr.  
5 Bjerken do not comply with A.A.C. R14-4-305 as neither Answer contains a response to all of the  
6 allegations made in the Notice. Mr. Bjerken was granted additional time to file an amended answer  
7 that complies with A.A.C. R14-4-305.

8         Also on July 9, 2015, by Procedural Order, the hearing scheduled to commence on November  
9 2, 2015, was affirmed. Mr. Bjerken was ordered to file an amended answer to the Notice by July 21,  
10 2015.

11         On July 24, 2015, the Division filed a Status Report Regarding Letter by Respondent Robert  
12 D. Bjerken Dated July 19, 2015 and Received by Division Counsel on July 23, 2015. Counsel for the  
13 Division reported having received a July 19, 2015 letter from Mr. Bjerken stating that he will not be  
14 filing an amended answer. The Division filed Mr. Bjerken's letter as an attachment.

15         On July 29, 2015, the O'Malleys' counsel, Chad A. Hester, filed an Expedited Ex Parte  
16 Motion to Withdraw as Counsel for Defendants Marty O'Malley and Julie Unruh O'Malley. Citing  
17 ER 1.16(b) of the Arizona Rules of Professional Conduct, Mr. Hester contended good cause existed  
18 for the permissive withdrawal of his representation of the O'Malleys.

19         On August 13, 2015, by Procedural Order, Mr. Hester's Motion to Withdraw was granted.

20         On August 28, 2015, Mr. O'Malley filed a motion requesting an extension of time for the  
21 exchange of witness lists and exhibits from September 3, 2015 to September 18, 2015. Mr. O'Malley  
22 stated the reason for the extension was that his new attorney would be out of town until September 8,  
23 2015. Mr. O'Malley asserted that he had spoken to the Division and they did not oppose an  
24 extension to no later than September 18, 2015. Mr. O'Malley further asserted that he attempted to  
25 obtain a position from Mr. Bjerken, but Mr. O'Malley had not yet received a response.

26         On August 31, 2015, by Procedural Order, Mr. O'Malley's motion was granted.

27         On September 17, 2015, Mr. Bjerken filed his list of witnesses and exhibits.

28 ...

1 On September 18, 2015, a Notice of Appearance was filed by Joseph C. Crary on behalf of  
2 the O'Malleys.

3 On that same day, the O'Malleys filed their list of witnesses and exhibits.

4 On October 26, 2015, the Securities Division filed a Motion to Continue Administrative  
5 Hearing. The Division moved to continue the hearing scheduled to commence on November 2, 2015,  
6 because, according to the Division, Respondents Bjerken and the O'Malleys have each executed a  
7 proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and  
8 Consent to Same ("Proposed Consent Orders"). The Division intends to present the Proposed  
9 Consent Orders and a default order against Deer Park Development Corporation to the Commission  
10 at the next regularly scheduled Open Meeting. The Division further avows that Respondents Bjerken  
11 and the O'Malleys agree with the request to continue pending approval or rejection of the Proposed  
12 Consent Orders by the Commission.

13 Good cause has been shown to continue the administrative hearing.

14 IT IS THEREFORE ORDERED that the **Motion to Continue Administrative Hearing is**  
15 **hereby granted.**

16 IT IS FURTHER ORDERED that **the hearing currently scheduled to commence on**  
17 **November 2, 2015, is vacated.**

18 IT IS FURTHER ORDERED that **the hearing be continued indefinitely pending**  
19 **Commission approval or rejection of the Proposed Consent Orders and default order.**

20 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
21 Communications) is in effect and shall remain in effect until the Commission's Decision in this  
22 matter is final and non-appealable.

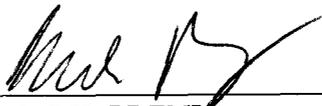
23 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules  
24 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

25 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance  
26 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona  
27 Supreme Court Rule 42). Representation before the Commission includes appearances at all hearings  
28 and procedural conferences, as well as all Open Meetings for which the matter is scheduled for

1 discussion, unless counsel has previously been granted permission to withdraw by the Administrative  
2 Law Judge or the Commission.

3 IT IS FURTHER ORDERED that the Presiding Administrative Law Judge may rescind, alter,  
4 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by  
5 ruling at hearing.

6 DATED this 27<sup>th</sup> day of October, 2015.

7  
8   
9 \_\_\_\_\_  
10 MARK PRENEY  
11 ADMINISTRATIVE LAW JUDGE

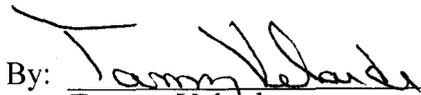
12 Copies of the foregoing mailed/delivered  
13 this 27<sup>th</sup> day of October, 2015, to:

14 Robert D. Bjerken  
15 P.O. Box 2921  
16 Scottsdale, AZ 85252

17 Joseph Crary  
18 2000 North 7<sup>th</sup> Street  
19 Phoenix, AZ 85006  
20 Attorneys for Marty and Julie O'Malley

21 Matthew Neubert, Director  
22 Securities Division  
23 ARIZONA CORPORATION COMMISSION  
24 1300 West Washington Street  
25 Phoenix, AZ 85007

26 COASH & COASH, INC.  
27 Court Reporting, Video and Videoconferencing  
28 1802 North 7th Street  
Phoenix, AZ 85006

By:   
Tammy Velarde  
Assistant to Mark Preney